*Insert date*

T00115HB – Brixham Harbour Waste and Recycling

between

The Council of the borough of torbay

and

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**THIS AGREEMENT** is dated XXXXX

Parties

1. The Council of the Borough of Torbay of Town Hall, Castle Circus, Torquay, TQ1 3DR (Authority)
2. XXXXXXXXX (Service Provider)

Background

1. The Authority sought proposals for a Waste and Recycling Service at Brixham Harbour by means of a public tender exercise.
2. The Authority has, through a competitive process, selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.
3. Documents that form part of this agreement are
   1. the completed tender documents including the Specification, Tender Response, Supporting Documentation, accompanying the tender response.
   2. the Award Letter

Agreed terms

# Definitions and Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels**:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2).

Associated Company**:** any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Representatives**:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Schedule 5.

Authority Assets**:** any land, materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services[ as identified in Schedule 8].

Authority's Premises**:** the premises identified in Schedule 8 and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this agreement.

Best Industry Practice**:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act**:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

[Catastrophic Failure

### a failure by the Service Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.

### any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

Change**:** any change to this agreement including to any of the Services.

Change Control Procedure**:** the procedure for changing this agreement, as set out in Schedule 6.

Charges**:** the subsidy payments which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date**:** the date of this agreement.

Commercially Sensitive Information**:** comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

Contract Year**:** a period of 12 months, commencing on the Commencement Date

Crown**:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Crown Body**:** any department, office or agency of the Crown.

Data Processor**:** shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation**:** the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice**:** is defined in clause 5.2.

[Disaster**:** an event defined as a disaster in the Disaster Recovery Plan.]

[Disaster Recovery Plan**:** a plan which sets out the procedures to be adopted by the Service Provider in the event that [INSERT WHAT DISASTER RECOVERY PLAN IS TO COVER] by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event).]

Dispute Resolution Procedure**:** the procedure set out in clause 20.

Environmental Information Regulations**:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA**:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure**:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Information**:** has the meaning given under section 84 of FOIA.

Initial Term**:** the period commencing on the Commencement Date and ending on the first (1st) anniversary of the Commencement Date.

Intellectual Property**:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel**:** those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports**:** the reports to be prepared and presented by the Service Provider in accordance with clause 17 and Schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents**:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all.

Payment Plan**:** the plan for payment of the Charges as set out in Schedule 4.

Personal Data**:** shall have the same meaning as set out in the Data Protection Act 1998.

Prohibited Act**:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

### committing any offence:

#### under the Bribery Act;

#### under legislation creating offences concerning fraudulent acts;

#### at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or

#### defrauding, attempting to defraud or conspiring to defraud the Authority.

Regulated Activity**:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider**:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer**:** a relevant transfer for the purposes of TUPE.

Remediation Notice**:** a notice served by the Authority in accordance with clause 30.1(a).

Replacement Services**:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Replacement Service Provider**:** any third party Service Provider of Replacement Services appointed by the Authority from time to time.

Request for Information**:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Failure**:** a failure by the Service Provider to provide the Services in accordance with any individual Service Level[ measured on a monthly basis].

Service Provider Party**:** the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel**:** all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender**:** the tender submitted by the Service Provider and other associated documentation

Services**:** the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 (Specification).

Sub-Contract**:** any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor**:** the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Term**:** the period of the Initial Term as may be varied by:

### any extensions to this agreement which are agreed pursuant to clause 3; or

### the earlier termination of this agreement in accordance with its terms.

Termination Date**:** the date of expiry or termination of this agreement.

Termination Payment Default**:** is defined in Schedule 4.

TUPE**:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Working Day**:** Monday to Friday, excluding any public holidays in England and Wales.

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)[ and that person's legal and personal representatives, successors and permitted assigns].

## The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Words in the singular shall include the plural and vice versa.

## A reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## A reference to **writing** or **written** includes faxes [but not **OR** and] e-mail.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

## References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

## Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

## Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the agreement;

### Schedule 1 to this agreement;

### the remaining schedules to this agreement

Commencement and duration

# Term

This agreement shall take effect on the Commencement Date and shall continue for the Term of 5 years.

# Extending the initial term

## Not Used

## Not Used

## If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

# Consents, Service Provider's warranty and due diligence

## The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same

## Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

## The Service Provider acknowledges and confirms that:

### it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

### it has received all information requested by it from the Authority pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

### it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.3(b);

### it has raised all relevant due diligence questions with the Authority before the Commencement Date; and

### it has entered into this agreement in reliance on its own due diligence.

## Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## The Service Provider:

### as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and

### shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

## The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

The services

# Supply of services

## The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.

## In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a Default Notice).

# Service levels

## The Service Provider shall provide records of and provide Management Reports summarising the Achieved Service Levels

## In the event that a Service Failure occurs, the parties shall implement the service credit regime set out in the Tender Response and detailed in Schedule 7.

## In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Authority may have, the provisions of clause 12 shall apply.

# Service standards

## Without prejudice to clause 6, the Service Provider shall provide the Services, or procure that they are provided:

### with reasonable skill and care and in accordance with the best practice prevailing in the Events Management industry from time to time;

### in all respects in accordance with the Authority's policies set out in Schedule 1; and

### in accordance with all Applicable Laws.

## Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and

### not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

# Health and Safety

## The Service Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement. The Authority shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Service Provider in the performance of the agreement.

## While on the Authority's Premises, the Service Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.

## The Service Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

## The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the agreement.

## The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

# Authority's Premises and Assets

## The Authority shall, subject to clause 8 and clause 14, provide the Service Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services.

## The Authority shall provide the Service Provider with such accommodation and facilities in the Authority's Premises as is specified in Schedule 8 or which is otherwise agreed by the parties from time to time.

## Subject to the requirements of clause 34, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Authority's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Service Provider.

## The Service Provider shall ensure that:

### where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;

### only those of the Service Provider's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;

### any Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative.

## The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.

## The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

# Disaster recovery

## The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

## Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:

### implement the Disaster Recovery Plan;

### continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and

### restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

To the extent that the Service Provider complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Service Provider), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.]

Charges and payment

# Payment

## In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider.

## The Service Provider shall invoice the Authority for payment of the Charges at [the end of each calendar month **OR** at the time the Charges are expressed to be payable in accordance with the Payment Plan]. All invoices shall be directed to the Authority's Representative.

## The Authority shall pay the Charges which have become payable [in accordance with the Payment Plan] within 30 days of receipt of an undisputed invoice from the Service Provider.

## Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.

## Subject to clause 11.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 30.3 for failure to pay undisputed charges.

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

## The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.

## Where the Service Provider enters into a Sub-Contract with a Service Provider or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

## The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement, including the Admission Agreement, or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.

## The Service Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Service Provider.

# STEP IN RIGHTS

Step-in

* + - 1. The Authority may take action under this clause in the following circumstances:
         1. there is a breach by the Service Provider of its obligations that is materially preventing or materially delaying the performance of the Services or any part of the Services;
         2. there is a delay that has or the Authority reasonably anticipates will result in the Service Provider's failure to provide any aspect of the Services by an agreed date;
         3. a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
         4. where the Service Provider is not in breach of its obligations under this Contract but the Authority considers that the circumstances constitute an emergency;
         5. because a serious risk exists to the health or safety of persons, property or the environment;
         6. to discharge a statutory duty; and/or
         7. on the occurrence of an Insolvency Event in respect of the Service Provider.

Action To Be Taken Prior To Exercise Of The Right Of Step-in

* + - 1. Before the Authority exercises its right of step-in under this clause it shall permit the Service Provider the opportunity to demonstrate to the Authority's reasonable satisfaction within 14 Working Days that the Service Provider is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.
      2. If the Authority is not satisfied with the Service Provider's demonstration, the Authority may:
         1. where the Authority considers it expedient to do so, require the Service Provider by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;
         2. appoint any person to work with the Service Provider in performing all or a part of the Services (including those provided by any Sub-Contractor); or
         3. take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-Contractor).
      3. The Service Provider shall co-operate fully and in good faith with the Authority, or any other person appointed and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.

Exercise of the Right of Step-in

* + - 1. If the Service Provider:
         1. fails to confirm within 10 Working Days of a notice served that it is willing to comply with that notice; or
         2. fails to work with a person appointed in accordance with this clause; or
         3. fails to take the steps notified to it by the Authority pursuant to this clause,

then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Service Provider may require any third parties to comply with a confidentiality undertaking equivalent to clause .

* + - 1. If the Authority takes action, the Authority shall serve notice (Step-in Notice) on the Service Provider. The Step-in Notice shall set out the following:
         1. the action the Authority wishes to take and in particular the Services it wishes to control;
         2. the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Service Provider's default;
         3. the date it wishes to commence the action;
         4. the time period which it believes will be necessary for the action;
         5. whether the Authority will require access to the Service Provider's premises;
         6. to the extent practicable, the effect on the Service Provider and its obligations to provide the Services during the period the action is being taken.
      2. Following service of a Step-in Notice, the Authority shall:
         1. take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the Required Action);
         2. keep records of the Required Action taken and provide information about the Required Action to the Service Provider;
         3. co-operate wherever reasonable with the Service Provider in order to enable the Service Provider to continue to provide any Services in relation to which the Authority is not assuming control; and
         4. act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Authority's rights under this clause.
      3. For so long as and to the extent that the Required Action is continuing, then:
         1. the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
         2. the Authority shall pay to the Service Provider the Charges after any applicable deductions in accordance with the terms of this Contract and the Authority's costs of taking the Required Action.
      4. If the Required Action results in:
         1. the degradation of any Services not subject to the Required Action; or
         2. the failure for the Services to be provided by an agreed date, beyond that which would have been the case had the Authority not taken the Required Action, then the Service Provider shall be entitled to an agreed adjustment of the Charges, provided that the Service Provider can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-achievement.
      5. Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Service Provider (Step-Out Notice), specifying:
         1. the Required Action it has actually taken; and
         2. the date on which the Authority plans to end the Required Action (Step-Out Date) subject to the Authority being satisfied with the Service Provider's ability to resume the provision of the Services and the Service Provider's plan
      6. The Service Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (Step-Out Plan) relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
      7. If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
      8. The Service Provider shall bear its own costs in connection with any step-in by the Authority

Staff

# Key personnel

## Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

## The Service Provider shall not remove or replace any of the Key Personnel unless:

### requested to do so by the Authority;

### the person is on long-term sick leave;

### the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;

### the person resigns from their employment with the Service Provider; or

### the Service Provider obtains the prior written consent of the Authority.

## The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

## Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than ten Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.

## The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

## If the Service Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Service Provider.

# Other personnel used to provide the services

## At all times, the Service Provider shall ensure that:

### each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Service Provider's Personnel to provide the Services properly;

### only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

### all of the Service Provider's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

## The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

## The Service Provider shall replace any of the Service Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

## The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

# Safeguarding children and vulnerable adults

## Not used

## The Service Provider shall ensure that, where required under the Safeguarding Vulnerable Groups Act 2006, all individuals engaged in the provision of the Services are:

### subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau including a check against the adults' barred list or the children's barred list, as appropriate; and

### the Service Provider shall monitor the level and validity of the checks under this clause 15.2 for each member of staff.

## The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made there under, as amended from time to time.

## The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

## The Service Provider shall refer information about any person carrying out the Services to the ISA where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any [service users/children/vulnerable adults].

## The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

# TUPE

Not used

# Reporting and meetings

## The Service Provider shall provide the management reports in the form agreed

## Not used

# Monitoring

## The Authority may monitor the performance of the Services by the Service Provider.

## The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

# Change control, benchmarking and continuous improvement

## Any requirement for a Change shall be subject to the Change Control Procedure.

## The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.

## Not used

# Dispute resolution

## Either party may call an extraordinary meeting of the parties by service of not less than [5 days'] written notice and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.

## The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted.

## Within 5 working days following the 14 days of service of such notice in clause 20.2, the parties shall then submit to the supervision of the mediation by the [Centre for Dispute Resolution or similar body] for the exchange of relevant information and for setting the date for negotiations to begin.

## If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.

## The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

# Sub-Contracting and assignment

## Subject to clause 21.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.

## In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

### remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

### impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

### provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

## The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

Liability

# Indemnities

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding the Service Provider).

# Limitation of liability

## Subject to clause 22 and clause 23.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

## Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under any applicable law.

# Insurance

## The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

### [public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;]

### [employer's liability insurance with a limit of indemnity of not less than £10,000,000 **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;]

### [professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;]

### [product liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims.]]

(the Required Insurances) The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

## The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

## The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

# Freedom of information

## The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Service Provider's expense) to enable the Authority to comply with these information disclosure requirements.

## The Service Provider shall and shall procure that its Sub-Contractors shall:

### transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;

### provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

### provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

## The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

### is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

### is to be disclosed in response to a Request for Information.

## In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

## The Service Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

### without consulting with the Service Provider; or

### following consultation with the Service Provider and having taken its views into account,

provided always that where clause 25.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

## The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

# Data protection

## The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

## Notwithstanding the general obligation in clause 26.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

### provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;

### promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 26.2; and

### ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

## The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

# Confidentiality

## Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

## Clause 27.1 shall not apply to any disclosure of information:

### required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

### that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

### where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;

### by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;

### to enable a determination to be made under clause 20;

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

### by the Authority to any other department, office or agency of the Government; and

### by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

## On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

# Audit

## During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Service Providers (including Sub-Contractors) of the Services;

### to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

### to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created during the provision of the Services;

### to review any books of account kept by the Service Provider in connection with the provision of the Services;

### to carry out the audit and certification of the Authority's accounts;

### to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;

### to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

## Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.

## The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

## Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

### all information requested by the above persons within the permitted scope of the audit;

### reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

### access to the Service Provider's Personnel.

## The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

## If an audit identifies that:

### the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

### the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

### the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing within 30 days.

# Intellectual property

## In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

### in the course of performing the Services; or

### exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

## The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

Termination

# Termination for breach

## The Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

### if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 30.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;

### if a Consistent Failure has occurred;

### if a Catastrophic Failure has occurred;

### if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;

### if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;

### if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects.

## If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

## The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

# Termination on notice

The Authority may terminate this agreement at any time by giving not less than ninety (90) days written notice to the Service Provider.

# Force majeure

## Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

## In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

### give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

### use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

### resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

## The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.

## As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

## The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than ninety (90) Working Days.

# Prevention of bribery

## The Service Provider:

### shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;

### warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

## The Service Provider shall:

### if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

### within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 33 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

## The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

## If any breach of clause 33.1 is suspected or known, the Service Provider must notify the Authority immediately.

## If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 33.1, the Service Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

## The Authority may terminate this Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 33.1. [In determining whether to exercise the right of termination under this clause 33.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or Service Provider not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

### with the authority; or,

### with the actual knowledge;

of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

### in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.]

## Any notice of termination under clause 33.6 must specify:

### the nature of the Prohibited Act;

### the identity of the party whom the Authority believes has committed the Prohibited Act; and

### the date on which this Agreement will terminate.

## Despite clause 20 (Dispute resolution), any dispute relating to:

### the interpretation of clause 33; or

### the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

## Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

# Consequences of termination

## On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Service Provider.

## On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Service Provider's shall certify full compliance with this clause.

## The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

General provisions

# Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this agreement[, and for a period of one year thereafter,] solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

# Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

# Cumulation of remedies

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

# Severability

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

# Partnership or agency

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

# Third party rights

## No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

# Publicity

The Service Provider shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

# Notices

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

# Entire agreement

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

# Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

# Governing law and jurisdiction

## This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

## The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

|  |  |
| --- | --- |
| Executed **as a deed** by: The Council of the Borough of Torbay  The Common Seal of the)  Council of the Borough )  Of Torbay was hereunto )  Affixed in the presence )  Of:  **……………………………..**  Proper Officer and Authorised Signatory  Signed by [NAME OF DIRECTOR]  for and on behalf of [NAME OF SERVICE PROVIDER] | .......................................  Director |
|  |  |

1. Specification
2. Tender Response
3. Compactor Lease Agreement

TO BE INSERTED BY SUCCESSFUL APPLICANT POST CONTRACT AWARD

1. Charges and payment

TO BE INSERTED FROM TENDER RESPONSE

1. Contract management
2. Authorised representatives

The Authority's initial Authorised Representative:

The Service Provider's initial Authorised Representative:

The details of how the contract will be managed will be finalised with the Service Provider in the first quarter of the contract. However, the principles of the contract management process were set out in the Specification of the Procurement Process and we will be broadly adhering to these principles.

1. Change control
2. General principles
   1. Where the Authority or the Service Provider sees a need to change this agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
   2. Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
   3. Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
   4. Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Service Provider.
3. Procedure
   1. Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
      1. no further action being taken; or
      2. a request to change this agreement by the Authority; or
      3. a recommendation to change this agreement by the Service Provider.
   2. Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
   3. A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
   4. Each Change Control Note shall contain:
      1. the title of the Change;
      2. the originator and date of the request or recommendation for the Change;
      3. the reason for the Change;
      4. full details of the Change, including any specifications;
      5. the price, if any, of the Change;
      6. a timetable for implementation, together with any proposals for acceptance of the Change;
      7. a schedule of payments if appropriate;
      8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
         1. the timetable for the provision of the Change;
         2. the personnel to be provided;
         3. the Charges;
         4. the Documentation to be provided;
         5. the training to be provided;
         6. working arrangements;
         7. other contractual issues;
      9. the date of expiry of validity of the Change Control Note; and
      10. provision for signature by the Authority and the Service Provider.
   5. For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:
      1. allocate a sequential number to the Change Control Note; and
      2. evaluate the Change Control Note and, as appropriate:
         1. request further information;
         2. arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
         3. notify the Service Provider of the rejection of the Change Control Note.
   6. A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.
4. Service Credits

TO BE INSERTED FROM TENDER RESPONSE

1. Authority's Premises and Assets